In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-142

JOHN J. RUISI AND DOROTHY C. KORN, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury-waived trial in the United States District Court for the Eastern District of New York, petitioners were convicted of having engaged in the business of dealing in firearms without a license, in violation of 18 U.S.C. 922(a)(1). They were sentenced to probation for one day. The court of appeals affirmed (Pet. App. 1a-9a). The evidence is not in dispute and is set forth in the opinion below (Pet. App. 1a-3a).[1]

[1] Petitioner Korn owns a corporation with two stores in Manhattan specializing in the sale of war surplus goods. Petitioner Ruisi is an employee at one of the stores. The corporation had federal licenses to deal in firearms at the stores. The present charges were based on petitioners' sales of firearms at a gun show in Long Island where the licenses were inapplicable.

1. Petitioners contend that the statute does not apply to intrastate dealing in firearms. This contention is answered in the opinion below (Pet. App. 4a–6a), which points out that the unambiguous language and legislative history of the act show that it was intended to prohibit all unlicensed dealing in firearms. Petitioners' reliance on *United States* v. *Bass,* 404 U.S. 336, is misplaced since that case dealt with another, differently worded provision of the Act with a meager and inconclusive legislative history. Although the present case is apparently the first to reach an appellate court involving this subsection,[2] we note that the courts of appeals have uniformly determined that another subsection, 18 U.S.C. 922(a)(6), prohibiting the making of false statements to a dealer in connection with the acquisition of a firearm, applies to all such false statements irrespective of any nexus between the particular firearm and interstate or foreign commerce. *E.g., United States* v. *Menna,* 451 F. 2d 982, 984 (C.A. 9), certiorari denied, 405 U.S. 963; *United States* v. *Nelson,* 458 F. 2d 556 (C.A. 5); *United States* v. *White,* 451 F. 2d 696 (C.A. 5), certiorari denied, 405 U.S. 998; *United States* v. *Hudson,* C.A. 4, No. 72–1101, decided May 22, 1972; *United States* v. *Crandall,* 453 F. 2d 1216 (C.A. 1). Petitioners' contention that, if interpreted to apply to intrastate dealings in firearms, Section 922(a)(1) impinges upon the powers reserved to the States is without merit in view of the principles enunciated in *Perez* v. *United States,*

[2] Two district courts—*United States* v. *Fancher,* 323 F. Supp. 1069 (D. S.Dak.); *United States* v. *Gross,* 313 F. Supp. 1330 (S.D. Ind.)—have reached the same conclusion as the court below.

402 U.S. 146. See *Nelson, supra,* 458 F. 2d at 559; *Crandall, supra,* 453 F. 2d at 1217.

2. Petitioners also urge that they were denied the right to a speedy trial. The offenses at issue occurred in mid-October 1969. Petitioners were arrested on October 29, 1969, and the indictment was returned approximately one year later on October 13, 1970. Petitioners filed a motion to dismiss the indictment for lack of a speedy trial on December 4, 1970, and the motion was denied on July 14, 1971. The trial commenced on December 13, 1971.

Petitioners were at all times released on their own recognizance prior to trial. Following indictment they made no demand for a speedy trial,[3] nor did they allege any prejudice resulting from either the pre-indictment or post-indictment intervals. And the intervals were not themselves unduly lengthy. In these circumstances petitioners' rights under the Sixth Amendment and Rule 48, F. R. Crim. P. were not violated. See *United States* v. *Marion,* 404 U.S. 307; *Barker* v. *Wingo,* No. 71–5255, decided June 22, 1972.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

SEPTEMBER 1972.

---

[3] As this Court noted in *Barker* v. *Wingo*, No. 71–5255, decided June 22, 1972, slip op. pp. 20–21, a motion to dismiss the indictment cannot be construed as a demand for a speedy trial since the remedy sought is not trial but dismissal of the charges. See also *United States* v. *Maxwell*, 383 F. 2d 437, 441 (C.A. 2), certiorari denied, 389 U.S. 1057; *Pietch* v. *United States*, 110 F. 2d 817, 819 (C.A. 10), certiorari denied, 310 U.S. 648.

U.S. GOVERNMENT PRINTING OFFICE: 1972